

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
NORTHERN DIVISION
NO: 5:13-MC-00075-WW

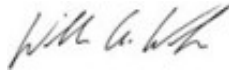
JAMES COMMEDO,)	
)	
Plaintiff,)	
v.)	
)	ORDER
TWO HAWK TEMPORARY SERVICE,)	
)	
Defendant)	

This matter comes before the Court upon Plaintiff's motion to continue (DE 1) in which he seeks a continuation relating to his Right to Sue letter issued by the EEOC on August 28, 2013. (DE 1-1). Plaintiff, who is pro se and lists a South Carolina address, has filed the instant pleading in this forum. However, no complaint has been filed.

It appears that Plaintiff seeks to commence this action by moving for an Order extending the time to file his complaint pursuant to North Carolina Rule of Civil Procedure 3(a). Rule 3 states that an action is commenced upon the filing of a complaint or may, alternatively, commence an action by filing for an extension of time and by securing a summons from state court. *See* N.C.R. Civ. P. 3(a). Merely filing an application for an extension of time is insufficient; a plaintiff must have a summons issued within the relevant statutory period to sustain his claims. *See, e.g., Sink v. Easter*, 284 N.C. 555, 558, 202 S.E. 2d 138, 140 (1974) (concluding that plaintiff's state law suit was properly initiated under "the procedure which permits an action to be commenced by the issuance of a summons"); *Beall v. Beall*, 156 N.C. App. 542, 577 S.E. 2d 356 (2003) (affirming dismissal of plaintiff's claims because, prior to the expiration of the statute of limitations, plaintiff did not have a Rule 3 summons issued along with her application for a time extension).

The North Carolina Rules of Civil Procedure, however, apply only to proceedings in the superior and district courts of North Carolina. N.C. R. Civ. P. 1. These Rules are not applicable to the commencement of a federal action. The Federal Rules of Civil Procedure provide that an action is commenced in federal court with the filing of a complaint. Fed. R. Civ.P. 3. The Federal Rules do not provide for the commencement of an action as contemplated by N.C. R. Civ. P. 3(a). *See Taylor-Todd v. Trivette*, No.1:12-MC-28, 2012 WL 4717892, at *1 (W.D.N.C. Oct. 3, 2012). Accordingly, the Plaintiff's motion for an enlargement of time in which to file his complaint (DE 1) is DENIED.

DONE AND ORDERED in Chambers at Raleigh, North Carolina on December 11, 2013.



WILLIAM A. WEBB
UNITED STATES MAGISTRATE JUDGE